

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

RICHARD J. SIMPSON

Plaintiff,  
vs.  
CASE NO.: 2:07-CV-12609

PATRICIA CARUSO et al.,  
Defendants.  
/

DISTRICT JUDGE GEORGE CARAM STEEH  
MAGISTRATE JUDGE STEVEN D. PEPE

**Report and Recommendation to Dismiss 18 Defendants From Suit**

On June 19, 2007, Plaintiff filed a Complaint naming 37 Defendants alleging that their deliberate indifference led to the provision of inadequate medical care causing Plaintiff constant pain and discomfort (Dkt. #1). Plaintiff claims that his diagnosis of chronic lung disease, his rib cage pain and acid reflux warrant tests for lung cancer (given his family history for cancer) or for other pulmonary problems which various Doctor Defendants have denied. While in prison, Plaintiff has had surgery on his left knee and left shoulder. He apparently needs surgery on his right knee and lower back. While acknowledging requests for postponement due to family "emergencies," Plaintiff denies he has refused such surgery as the Defendants assert. He claims he needs a new knee brace and total reconstruction of both knees not only pain medication to alleviate the symptoms. Plaintiff also suffers from Folliculitis, a skin disease, for which he claims he is being denied proper soaps and lotions.

On September 28, 2007, Defendants Correctional Medical Services, Keith Ivens, M.D., Michael Kennerly, P.A., Jason Yungsup Kim, M.D., Jane May, R.N., Muhammad Mustafa, M.D., William Nelson, M.D., Luis Nino, M.D., and Mohammad Hadid, M.D., filed a motion for

summary judgment (Dkt. # 58). On October 24, 2007, Plaintiff responded to Defendants' motion (Dkt. # 73).

On October 31, 2007, Defendants Patricia Caruso, George Pramstaller, Jan Epp, Leslie Wight, Allen (Y. Ellen), Beth Stevens (Stevenson), Mark L. West, Evelyn R. Pietrangelo, Joseph B. Damron, Gerald Covert, Cher J. Luxton, Shirlee Harry, Mark J. Kelly, Tamerla Hamilton, Rhonda K. Cooper, Amy L. MacDowell and Wendy L. Ball filed a motion for summary judgment (Dkt. # 75). On November 26, 2007, Defendant filed a response to this motion (Dkt. # 77).<sup>1</sup>

In Plaintiff's Responses (Dkt. # 73 & 77), he addressed Defendants' summary judgment motions. While arguing against summary judgment for all of the moving parties, Plaintiff agreed that 18 Defendants should be dismissed from the suit for various reasons. Specifically, Plaintiff stated that Plaintiff did not exhaust his claims against Keith Ivens, M.D., Mohammad Hadid, M.D., Jane May, R.N., and Luis Nino, M.D. (Dkt. # 73, Plaintiff's Response Brief, p. 1). Plaintiff acknowledged that the statute of limitations has run barring his claims against Muhammad Mustafa, M.D., and William Nelson, M.D. *Id.* In response to the Attorney General's motion, Plaintiff stated that all his grievances were exhausted as to all Defendants except "Epp, Wight, Allen, Stevens, Pietrangelo, Damron, Covert, Luxton, Kelly, Hamilton, MacDowell and Knack" (Dkt. # 77, Plaintiff's Response Brief, p. 1).

Federal Rule of Civil Procedure 41(a)(2) provides that:

Except as provided in paragraph (1), an action may not be

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<sup>1</sup>Plaintiff's motion is titled "RESPONSE to 58 MOTION to Dismiss or for Summary Judgment Pursuant to FRCP 12(B)(6) or 56(b)," but it is clear that Plaintiff is responding to Dkt. # 75.

dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court considers proper. If a counterclaim has been pleaded by a defendant before service of the plaintiff's motion to dismiss, the action may not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice."

Fed. R. Civ. P. 42(a)(2).

Given the existence of agreement between the parties, **IT IS RECOMMENDED** that Defendants Keith Ivens M.D., Mohammad Hadid M.D., Jane May R.N., Luis Nino M.D., Muhammad Mustafa M.D., William Nelson M.D., Jan Epp, Leslie Wight, Allen (Y. Ellen), Beth Stevens (Stevenson), Evelyn R. Pietrangelo, Joseph B. Damron, Gerald Covert, Cher J. Luxton, Mark J. Kelly, Tamerla Hamilton, Amy L. MacDowell and Jessica L. Knack **BE DISMISSED WITH PREJUDICE** from this suit.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Sec'y of Health and Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local*, 231, 829 F.2d 1370,1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

Date: January 16, 2008  
Ann Arbor, Michigan

s/Steven D. Pepe  
United States Magistrate Judge

#### CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on January 16, 2008.

s/Deadrea Eldridge  
Courtroom Deputy Clerk